

ED FACT SHEET: Supplement-not-Supplant under Title I of the Every Student Succeeds Act

August 31, 2016

Today, the U.S. Department of Education (the Department) released proposed regulations to implement the requirement in Title I of the Elementary and Secondary Education Act (ESEA), as recently revised by the Every Student Succeeds Act (ESSA) that federal funds must supplement, and may not supplant, state and local funds. The proposal will help ensure that federal funds are additive and do not take the place of state and local funds in low-income schools, in keeping with the longstanding commitment under Title I that the nation's highest need students receive the *additional* financial resources necessary to help them succeed. The proposed regulation would mean up to **\$2 billion** in additional state and local funding for high poverty schools.

"For too long, the students who need the most have gotten the least," said U.S. Secretary of Education John B. King Jr. "The inequities in state and local funding that we see between schools within districts are inconsistent not only with the words 'supplement-not-supplant' but with the civil rights history of that provision and with the changes Congress made to the law last year. No single measure will erase generations of resource inequities, and there is much more work to do across states and districts to address additional resource inequities, but this is a concrete step forward to help level the playing field and ensure compliance with the law."

Wade Henderson, president and CEO of The Leadership Conference on Civil and Human Rights said, "Plainly put, our system of funding education is unfair and unwise and this draft rule is an important step toward improving an intolerable status quo. Our states and districts routinely spend less money to educate children facing greater challenges. This rule doesn't solve this massive problem—no single rule could—but it's a step in the right direction and brings us closer to a more just education system."

Civil Rights History of the "Supplement-not-Supplant" Provision

ESEA was first passed in 1965 to address enormous inequities in educational opportunities provided to low-income students and children of color. It became law around the same time as the Civil Rights Act and the Voting Rights Act, and was intended to reduce, and ultimately eliminate, disparities in educational quality. The original purpose of the law was, at its core, to support educational opportunity for economically disadvantaged students in the spirit of providing all children across the country a high quality education. To that end, the law provided funds to schools with high concentrations of poverty—through Title I—to ensure those schools receive additional resources relative to their peers to support their high-need students.

Four years after ESEA became law, the National Association for the Advancement of Colored People (NAACP) Legal Defense and Education Fund did a [study](#) on how states were spending federal education resources provided under Title I. The report revealed egregious misuses of funds, including an example from Mississippi where a superintendent admitted in federal court that the *highest* state and local per-pupil expenditure for schools serving black students in his district was half of the *lowest* per-pupil expenditure for schools serving white students. Although Title I funds were intended to provide high-need students with additional resources relative to their peers, the gap in state and local funds was making that impossible.

In 1970, in the wake of these findings, Congress added a provision to ESEA designed to ensure that districts did not use Title I funds simply to shirk their responsibilities to provide equitable state and local funding to all schools. In revising ESEA last year, Congress specified a new requirement under supplement, not supplant that indicates that schools receiving Title I federal funds must receive all of the State and local funds the school would have otherwise received if it were not receiving the federal resources.

More than forty years after ESEA was enacted, our nation has still not achieved the law's original promise of providing *all* students with equitable access to educational resources. The vast majority of districts—more than ninety percent—already ensure that their Title I schools receive at least as much state and local funding per student as their non-Title I schools—which does not necessarily ensure adequate funding for a high-quality education for students who often need more, but is consistent with the statute. However, 3.3 million children remain in Title I schools that receive less. Currently, schools receiving Title I funds educate more than two-thirds of our low-income children and children of color, and yet approximately 5,750 Title I schools nationwide received substantially less

state and local funding than their non-Title I peers *within the same district*. **on average, these Title I schools are shortchanged by about \$440,000 per year, and the federal funds spent in these schools are often, in effect, being used to make up some or all of that shortfall, instead of providing the additional resources needed in high poverty schools.** In total, these schools are underfunded compared to their non-Title I peers by \$2 billion in state and local funding. In part because of those disparities, but also because of further resource inequities including disparities in funding between districts and between states, our low-income students do not have the same access to rigorous and varied coursework, excellent educators, and college-level experiences that we know are necessary for them to get a fair shot and succeed in higher education or a career.

Resource Inequities in Schools Serving Students of Color and Low-Income Students

This proposed rule is designed to mitigate clear discrepancies in educational resources and opportunities, while ensuring compliance with the statute:

- Low-poverty and low-minority schools are twice as likely to offer a full range of math and science courses as high-poverty and high-minority schools;
- On average, low-poverty schools offer three times as many AP classes as high-poverty schools;
- Low-minority schools are twice as likely to offer dual enrollment or dual credit opportunities, compared with high-minority schools;
- Educators in high-poverty and high-minority schools are more than twice as likely to be in their first or second year of teaching, compared to their peers in low-poverty and low-minority schools.

Proposal Details

No single federal rule can make up for decades of resource inequities, and going forward we must continue to fight for full equity in funding between schools, districts and states, but today's proposal would mean up to \$2 billion in additional funding annually for our nation's poorest children, though the precise amount will depend on how districts comply with the requirements. That's a significant step forward in the ongoing fight for resource equity in our nation's schools, and to ensure federal dollars are spent as they are intended under the law: to ensure that our highest need students receive the *additional* resources they need to be successful.

Recognizing that this is not a simple undertaking, the draft regulations reflect the robust and thoughtful input provided during the negotiated rulemaking process, and feedback the Department received from stakeholders across the education system over the past few months. Compared to the proposal put forward during negotiated rulemaking, the new proposed regulations would allow districts and states significantly greater flexibility in complying with the supplement, not supplant provisions. As a number of negotiators suggested, it also builds upon the [non-regulatory guidance](#) the Department issued in 2015.

Specifically, the proposal clarifies for school districts options for how to demonstrate compliance with the supplement, not supplant, provision in Title I. Notably, the ESSA for the first time contains a statutory directive around how districts must demonstrate compliance with supplement, not supplant. The law states that districts must use a methodology to allocate state and local funds to each Title I school that ensures each such school receives all the state and local funds it would otherwise receive if it were not a Title I school. The proposal affirms that funds-based requirement and allows each district the flexibility to demonstrate compliance in a number of ways:

- A weighted student funding formula that provides additional resources for students with characteristics associated with educational disadvantage, such as students in poverty, English learners, and students with disabilities, and ensures that each Title I schools receives all of the actual funds to which it is entitled under that system;
- A formula that allocates resources including staff positions and non-personnel resources directly to schools, and that ensures each Title I school gets all of the funding it is entitled to, as measured by the sum of (1) the number of personnel in the school multiplied by the district's average salaries for each staff category, and (2) the number of students in the school multiplied by the district's average per-pupil expenditures for non-personnel resources;
- An alternative, funds-based test developed by the state and approved by a panel of expert peer reviewers that is as rigorous as the above two options; or
- A methodology selected by the district that ensures the per-pupil funding in each Title I school is at least as much as the average per-pupil funding in non-Title I schools within the district.

Regardless of how they choose to demonstrate compliance, the Department encourages districts to meet the requirement by:

- Increasing overall funding for education, with a focus on putting new resources in Title I schools, rather than shifting resources from other schools;
- Avoiding forced staff transfers and instead investing in providing the resources that students need to learn and that will attract staff to choose to work in Title I schools. Such resources might include high quality early learning opportunities, wraparound supports such as healthcare and counseling, improved working conditions, or financial incentives for effective educators who choose to work in high-need schools.

Flexibilities for Districts

Understanding that school budgeting is complicated and often requires varied approaches from district-to-district and year-to-year, the proposed rule provides several flexibilities that take into account feedback given during negotiations, including:

- Exceptions for those cases in which discrepancies in state and local funding within districts are the result of investments in students with disabilities, English Learners or special schools.
- Flexibility for minor fluctuations from year to year within a district's budget.
- Flexibility for very small schools, where 100 or fewer students are enrolled.
- Opportunity to comply on a districtwide or grade span basis, as the cost of running a high school is often quite different than the cost of running an elementary school.
- Opportunity to exclude state or local funds expended for programs that meet the intent and purposes of Title I, Part A (e.g. a state-funded preschool program that provides additional services only for students most at risk of not meeting challenging State academic standards).
- Flexibility to exclude state and local funds spent on districtwide activities (e.g. districtwide administrative costs or districtwide summer school), provided that each Title I school receives an equal or greater share of those activities as it would otherwise receive if it were not a Title I school.

Finally, we recognize that this is challenging work that will take time to implement. The proposal provides additional time for districts that cannot demonstrate compliance by the statutory deadline in ESSA: December 2017. Those districts must submit to their state a plan in December 2017 for how they will fully comply beginning in the 2019-2020 school year. The Department encourages districts to take advantage of this time in order to implement strategies that increase funding for Title I schools in which federal funds may not currently be supplemental, consistent with the statutory requirement.

Building on Progress

Today's proposal builds on the Administration's efforts to promote equal educational opportunity across the country. High school graduation rates are now at an all-time high, with students who are historically further behind—low-income students, students of color, students with disabilities—making faster progress. Since 2009, the Administration has invested more than \$7 billion in turning around low-performing schools and provided \$4.2 million to the Excellent Educators for All initiative to help states develop and implement plans to ensure that low-income students and students of color are not taught at higher rates than their peers by unqualified, out-of-field, or inexperienced teachers. The Administration's investments in Promise Neighborhoods—a cradle-to-career program that places schools at the center of a community's revitalization efforts and aligns comprehensive supports such as high-quality early learning, after school activities, mental health services, job training, and crime prevention to the needs of students and families—enshrined in the ESSA, has improved opportunities in very high-need communities across the country. The Administration has also worked to invest over \$1 billion additional dollars in expanding access to high-quality preschool, one of the best investments we can make to close the achievement gap. We have also worked to improve college readiness by redesigning America's high schools, expanding access to community college through America's College Promise, and starting a pilot program allowing 10,000 high-school students to access Federal Pell Grants to pay for college-level courses.

The promise of ESSA is to provide all children with access to a high-quality, well-rounded education and prepare them to succeed in college or a career. We have come a long way as a country since the original passage of ESEA in 1965, but we must do better, and this proposal is an important step forward in providing our highest need children with the additional resources they need to succeed.